

DATE

Sharonda R. Williams
Fishman Haygood
201 St. Charles Avenue, 46th Floor
New Orleans, Louisiana 70170

Re: **Louisiana Board of Ethics**
Docket No. 2021-071

Dear Ms. Williams,

The Louisiana Board of Ethics, at its meeting on April 9, 2021, considered your request for an advisory opinion as to the post-employment restrictions of Section 1121 of the Code of Governmental Ethics (“Code”) for your client, Zachary R. Smith, following his resignation from the City of New Orleans.

FACTS PROVIDED

Zachary Smith was hired by the City of New Orleans (“City”) in 2009. In December of 2014, Mr. Smith became the Chief Building Official in the Department of Safety & Permits. In this position, Mr. Smith supervises building code plan review and inspections for the City, such that all permits for construction are issued and inspected by staff under his oversight. On June 17, 2018, Mr. Smith became the Director of the Dept. of Safety & Permits, where he supervised the entire safety and permitting department. While serving as Director, Mr. Smith remained Chief Building Official for purposes of building code plan review and inspections.

On March 2, 2020, Mr. Smith was moved into the position of Chief of Staff to Peter Bowen, Deputy Chief Administrative Officer (“CAO”) over the Office of Business & External Services, which oversees Economic Development and Land Use, the latter of which includes the Dept. of Safety & Permits. In his current position, Mr. Smith is responsible for preparing meeting agendas, coordinating schedules, and oversees staffing operations. As Chief of Staff, Mr. Smith does not have any oversight over specific projects or assignments within the Office of Business & External Services. Mr. Smith still serves as Chief Building Official for the purpose of building plan review and inspections; however, he does not currently maintain any supervision or oversight of the employees in the Dept. of Safety & Permits.

Mr. Smith is a licensed architect and intends to work in the construction and architectural industries to provide architectural consulting, advising, building code expertise, and design

build consulting services. You ask several questions concerning the post-employment restrictions of the Code that would apply to Mr. Smith upon his resignation from the City.

ISSUE NO. 1 – MR. SMITH’S AGENCY

You ask for the Board to advise as to what Mr. Smith’s agency was for purposes of the Code. La. R.S. 42:1102(2)(a)(vi) defines the “agency of the public servant” and “his agency,” for public servants of political subdivisions to mean the department, office, division, agency, commission, board, committee, or other organizational unit of the political subdivision in which the public servant serves. La. R.S. 42:1102 (12) defines “governmental entity” to mean the state or any political subdivision which employs the public employee or employed the former public employee.

The Board concluded, and instructed me to inform you, that Mr. Smith’s agency was the Dept. of Safety & Permits while he was employed in that department exclusively, as either the Chief Building Official and/or the Director. Currently, as Chief of Staff to Deputy CAO Bowen, Mr. Smith’s agency is the Office of Business & External Services. Mr. Smith’s governmental entity is the City of New Orleans.

ISSUE NO. 2 – DIRECTOR OF DEPT. OF SAFETY & PERMITS

You ask whether Mr. Smith is allowed to perform architectural services under a contract with an entity that seeks to obtain permits from the City of New Orleans. You also ask whether Mr. Smith is prohibited from participating in any transaction or appearance before any City departments to seek any type of permits on behalf of any company or individual that he may work for following his resignation. Finally, you ask whether Mr. Smith is prohibited from advising private clients on matters that may be presented to the City for permitting or plan review, if Mr. Smith is not the applicant on any permit applications submitted to the City.

La. R.S. 42:1102(3) defines “agency head” to mean the chief executive or administrative officer of an agency... who exercises supervision over the agency. The Board concluded that Mr. Smith was an agency head over the Dept. of Safety & Permits while he served as Director from June 2018 until March 2, 2020.

As a former agency head, Mr. Smith is governed by the prohibitions contained in La. R.S. 42:1121A(1):

No former agency head shall, for a period of two years following the termination of his public service as the head of such agency, assist another person, for compensation, in a transaction, or in an appearance in connection with a transaction, involving that agency or render any service on a contractual basis to or for such agency.

La. R.S. 42:1102(4) defines “assist” to mean to act in such a way as to help, advise, furnish information to, or aid a person with the intent to assist such person. La. R.S. 42:1102(16) defines “person” to mean an individual or legal entity other than a governmental entity, or an agency thereof.

As a result, the Board concluded, and instructed me to inform you, that **Section 1121A(1) prohibits Mr. Smith from assisting a private individual or entity, for compensation, in any transactions, or an appearance in connection with a transaction, involving the entire Dept. of Safety & Permits, for a period of two years from the end of his service as agency head on March 2, 2020.** This includes advising private individuals or entities, for compensation, on applications that may be presented to the Dept. of Safety & Permits for review, even if Mr. Smith is not the applicant. This also includes assisting any person, for compensation, in a project involving a permit application that was submitted to the Dept. of Safety & Permits while Mr. Smith was Director, whether or not Mr. Smith personally reviewed or issued the permit.

ISSUE NO. 3 – CHIEF OF STAFF

You ask the Board to clarify any prohibitions that may apply to Mr. Smith, in his capacity as Chief of Staff within the Office of Business & External Services, following his resignation from the City.

Since Mr. Smith is no longer an agency head, Mr. Smith is also governed by the general prohibitions regarding public employees contained in La. R.S. 42:1121B(1):

No former public employee shall, for a period of two years following the termination of his public employment, assist another person, for compensation, in a transaction, or in an appearance in connection with a transaction in which such former public employee participated at any time during his public employment and involving the governmental entity by which he was formerly employed, or for a period of two years following termination of his public employment, render, any service which such former public employee had rendered to the agency during the term of his public employment on a contractual basis, regardless of the parties to the contract, to, for, or on behalf of the agency with which he was formerly employed.

La. R.S. 42:1102(15) defines “participate” to mean to take part in or to have or share responsibility for action of a governmental entity or a proceeding, personally, as a public servant of the governmental entity, though approval, disapproval, decision, recommendation, the rendering of advice, investigation, or the failure to act or perform a duty.

As a result, the Board concluded, and instructed me to inform you, that **Mr. Smith is prohibited by Section 1121B(1), for a period of two years following his resignation from**

the City, from assisting a private individual or entity, for compensation, in a transaction, or in an appearance in connection with a transaction, involving the City of New Orleans, and in which Mr. Smith participated at any time while employed by the City of New Orleans.

The Board further concluded, and instructed me to inform you, that as Chief Building Official, Mr. Smith is deemed to have participated in any transaction which was submitted to the City of New Orleans and was subject to approval by the Chief Building Official, whether or not Mr. Smith personally reviewed the submission. As a result, for a period of two years following his resignation, Section 1121B(1) prohibits Mr. Smith from assisting any private individual or entity in a transaction involving the City of New Orleans, that required the approval of Mr. Smith as Chief Building Official, whether or not Mr. Smith personally reviewed or issued the permit.

Additionally, Mr. Smith is prohibited from rendering any services which he rendered while employed by the Office of Business & External Services, on a contractual basis to the Office of Business & External Service for a period of two years following his resignation from the City. This includes a prohibition against contracting to render services to, for, or on behalf of the Dept. of Safety & Permits.

ISSUE No. 4 – 1121C

You ask whether there is a prohibition against any private entity of which Mr. Smith has an ownership interest from seeking permits or engaging in any transaction with the City.

La. R.S. 42:1121C provides:

No legal entity in which a former public servant is an officer, director, trustee, partner, or employee shall, for a period of two years following the termination of his public service, assist another person, for compensation, in a transaction, or in an appearance in connection with a transaction in which such public servant at any time participated during his public service and involving the agency by which he was formerly employed.

The Board concluded, and instructed me to inform you, that **any private entity in which Mr. Smith is an officer, director, trustee, partner, or employee, is prohibited by Section 1121C, for a period of two years following Mr. Smith's resignation, from assisting a private individual or entity in a transaction, or in an appearance in connection with a transaction, involving the Office of Business & External Services, and in which Mr. Smith participated while employed by the City.** The prohibition in Section 1121C includes assisting any private individual or entity in a transaction involving the Office of Business & External Services and the Dept. of Safety & Permits, that required the approval of Mr. Smith as Chief Building Official, whether or not Mr. Smith personally reviewed or issued the permit.

ISSUE NO. 5 – 1112 PROHIBITIONS

You ask whether Mr. Smith is governed by the prohibitions in La. R.S. 42:1112 following his resignation from the City.

La. R.S. 42:1112 prohibits participation by a public servant in transactions involving the governmental entity in which certain conflicts of interest are present.

La. R.S. 42:1102(19) defines “public servant” to include any public employee or elected official. La. R.S. 42:1102(18)(a) defines “public employee” to mean anyone who is: (i) an administrative officer or official of a governmental entity who is not filling an elective office; (ii) appointed by any elected official when acting in an official capacity, and the appointment is to a post or position wherein the appointee is to serve the governmental entity or an agency thereof, either as a member of an agency, or as an employee thereof; (iii) engaged in the performance of a governmental function; or (iv) under the supervision or authority of an elected official or another employee of the governmental entity.

The Board concluded, and instructed me to inform you, that since he will no longer be providing services to, for, or on behalf of the City following his resignation, Section 1112 will not apply to Mr. Smith as he will no longer be considered a public servant for purposes of the Code.

RECOMMENDATION

Since you have not provided any specific potential conflict of interest, the Board issues no opinion regarding any specific situation involving Mr. Smith and a private individual or entity. If Mr. Smith has concerns regarding a specific situation, the Board recommends that he submit an additional advisory opinion request to determine the application, if any, of the Code.

This advisory opinion is based solely on the facts as set forth herein. Changes to the facts as presented may result in a different application of the provisions of the Code of Governmental Ethics. The Board issues no opinion as to past conduct or as to laws other than the Code of Governmental Ethics, the Campaign Finance Disclosure Act, the Lobbyist Disclosure Act, and conflict of interest provisions in the gaming laws. If you have any questions, please contact me at (800) 842-6630 or (225) 219-5600.

Sincerely,

LOUISIANA BOARD OF ETHICS

David M. Bordelon
For the Board